

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PATRICK JAMES McLEMORE,

Petitioner,

vs.

CASE NO. 07-11340
HON. LAWRENCE P. ZATKOFF

THOMAS K. BELL,

Respondent.

**OPINION AND ORDER ADOPTING MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION**

Petitioner filed an application for a writ of habeas corpus (Docket #1), followed by a Motion for Evidentiary Hearing (Docket #2). This matter is currently before the Court on Magistrate Judge Pepe's "Order" Denying Petitioner's Motion for Evidentiary Hearing Regarding Jury Misconduct (hereinafter, "Report and Recommendation") (Docket #10). The Magistrate Judge recommends that Petitioner's Motion for Evidentiary Hearing be denied.

After a thorough review of the court file, the Report and Recommendation, and the objections to the Report and Recommendation filed by the Petitioner, this Court will adopt the Report and Recommendation and enter it as the findings and conclusions of this Court. In addition, the Court briefly addresses the key issue raised by Petitioner in his objections to the Report and Recommendation.

In the Report and Recommendation, the Magistrate Judge concludes that "[t]his case presents an allegation concerning alleged internal influences not external ones." In his Objections, Petitioner does not so much contest the analysis the Magistrate Judge undertook with respect to internal influences. Rather, Petitioner argues that an analysis of alleged internal or external influences is not relevant to his Motion at all. Petitioner asserts that his Motion presents a question of whether an evidentiary hearing is warranted because members of his jury were biased and had predetermined his guilt, in violation of his Fifth and Sixth Amendment rights to a fair trial and an impartial jury.

The Court is not persuaded by Petitioner's argument. Like the Magistrate Judge, the Court finds the reasoning set forth in *Greene v. Lafler*, 447 F.Supp2d 780, 789 (E.D. Mich. 2006) (Lawson, J.) both to be legally sound and on point with the circumstances in this case. Significantly, in this case (as in *Greene*), the jury did not convict Petitioner on every charge sought by the State. Petitioner's jury rejected a premeditated murder charge against him, which rejection is inconsistent with Petitioner's contention that members of the jury had predetermined his guilt.

Therefore, for the reasons stated above, Petitioner's Motion for Evidentiary Hearing is DENIED.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: December 28, 2007

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on December 28, 2007.

s/Marie E. Verlinde
Case Manager
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